

REMARKS

Reconsideration of the present application in view of the above amendments and the following remarks is respectfully requested.

Status of the Claims

Claims 11 - 29 are pending. Claims 11, 21, 22 – 24 and 27 - 29 are amended herein. Claim 12 has been canceled. No new claims have been added.

The support for the amendment to claim 11 relating to cosmetic or dermatopharmaceutical topical application is found throughout the present specification, including particularly at page 5, paragraphs 5 and 6. The amendments to claim 11 relating to the list of additives and auxiliaries is supported throughout the specification, including the claims as originally filed.

Summary of the Invention as Claimed

All of the pending claims are now directed to cosmetic or dermatopharmaceutical compositions for use in connection with topical application, or to methods of cosmetic treatment of the human body comprising applying to the surface of the human body a composition as now claimed, or to methods of preparing a cosmetic composition. The composition claims (claims 11, 13 – 14, and 21 – 23) all now are specifically directed to compositions adapted for use in connection with topical application and require, in addition to the extract of leaves of a *Castanea sativa* plant, at least one cosmetic and/or dermatopharmaceutical auxiliary and/or additives adapted for topical treatment of the human body.

Applicants respectfully submit that the claims as amended fully satisfy the requirements of 35 USC 112, and furthermore that the invention as now claimed

is novel and patentably unobvious over the patent documents cited by the

Examiner, as explained in detail below.

The Claims As Amended Are Definite

In the outstanding office action, the Examiner rejected 16 – 19 for use of the term “wherein the cosmetic treatment comprises...” and claims 27 – 29 for use of the term “a method for preparing a cosmetic composition of claim...” Although applicants do not necessarily agree with the Examiner’s position on this language as originally presented in the claims, applicants have, in order to facilitate prosecution, substantially adopted the Examiner’s suggestions to improve the clarity of these claims. Accordingly, the Examiner’s rejections on these grounds are believed to be moot, and withdrawal thereof is respectfully requested.

The Examiner has also rejected claims 14, 22 and 29 as being vague and indefinite as a result of the final step recited therein, namely, “removing the solvent from the solution, to recover the extract.” The Examiner identified two reasons for this rejection. First, the Examiner stated that it would be “unclear how one would remove the solvent from the solution since the solvent is apparently defining the solution (i.e., there are not two separate entities.)” The Examiner’s second reason was that “it is unclear by this phrase as to what portion actually constitutes the “extract.” Applicants respectfully traverse the Examiner’s rejection on this ground. More particularly, applicants respectfully submit that those skilled in the art would understand that a solution does in fact involve two separate entities, namely, the solvent and the solute. Furthermore, applicants respectfully submit that it would be readily and commonly understood by those skilled in the art that the “extraction” step involves removing the solute, which is derived from the plant material, from the solvent according to any of several well-known techniques. The Examiner is respectfully reminded that the claims are read from the perspective of a person skilled in the art, and in the present case the skilled person would really understand and appreciate the

meaning of this claim language. Accordingly, the Examiner is respectfully requested to reconsider and withdraw this rejection.

The Claims As Amended Are Novel and Patentably Unobvious

In the outstanding office action the Examiner rejected the previously pending claims as being anticipated by and obvious over Withcl. Applicants respectfully submit that the claims as now pending are both novel and unobvious over this publication. More specifically, while applicants acknowledge that this publication is directed to extract compositions derived from the leaves of the *Castanea sativa* plant, there is no teaching or suggestion in this publication which would lead a person skilled in the art to compositions adapted for topical application to the human or skin, as required by the present claims. In fact, this publication is directed exclusively to the ingestion of such extracts by way of teas and other like beverages. Applicants respectfully submit that there is no teaching or suggestion in this publication which would even remotely suggests to the person skilled in the art to add any one of the additives or auxiliaries identified identified in claim 11 to such a tea or beverage. In fact, applicants respectfully submit that the addition of many of such additives to a tea or beverage would quite likely make such a product unpalatable and thereby destroy it for its intended purpose. Accordingly, applicants respectfully submit that the claims as now pending are patentable over this publication.

The Examiner also rejected the previously pending claims as being obvious over Peryot et al. As an initial matter, applicants respectively do not concede that this patent is in fact prior art to the invention as presently claimed. Applicants acknowledge the Examiner's statement that applicants may not rely on their foreign priority claim to overcome this rejection because a translation of the foreign priority papers has not been made of record. While applicants reserve the right to perfect any imperfections which may exist in the foreign priority claim, and thereby eliminate this patent as a proper prior art reference to the present claims, at the present time applicants respectfully submit that the

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claims now pending define subject matter which is novel and patently unobvious over this patent. More particularly, applicants note that this patent specifically identifies itself as being directed to extract from the **buds** of the *Castanea sativa* plant. In fact, the very title of this document is "EXTRACT OF CASTANEA SATIVA BUDS." And while this patent does mention that leaves and other portions of the plant can be extracted, applicants respectfully submit that this reference would not lead a person skilled in the art to expect the highly advantageous and beneficial results reported in the present application with regard to the use of the leaf extracts in connection with cosmetic and dermatological uses. Applicants respectfully submit that it is only the hindsight derived from the present application that would lead one skilled in the art to ignore the thrust of the Peryot et al. patent, which is directed to the **buds** of the plant, and to turn instead to the leaves of the plant. Accordingly, applicants respectfully request the withdrawal of this rejection as well.

Conclusion

Applicants respectfully submit that the invention as now claimed defines subject matter which is patentable over the cited documents. Accordingly an early notice of allowance is earnestly solicited.

The Commissioner is hereby authorized to charge any required fees, or credit any overpayment to, Deposit Account No. 501943.

Respectfully submitted,

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